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ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

SEPTEMBER 3, 1986.—Ordered to be printed

Filed under authority of the order of the Senate of August 16 (legislative day, August 11), 1986

Mr. STAFFORD, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2083]

The Committee on Environment and Public Works, to which was referred the bill (S. 2083), having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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General Statement

According to the best estimates of the Environmental Protection Agency (EPA), about 31,000 schools in this country incorporate building materials that contain cancer-causing asbestos in a form that easily could be crumbled into dust. As these materials deteriorate or are damaged by accident or design, the asbestos fibers can be released into the air. The microscopic fibers lodge in the deepest recesses of the lung where they cannot be expelled. Some 15,000,000 school children and 1.4 million school employees are potentially exposed to asbestos fibers in this way.

When inhaled, asbestos can cause lung cancer, pleural and peritoneal mesothelioma, and other forms of fatal cancer. At higher exposure levels, it causes asbestosis, a non-cancerous scarring of lung tissue. Though the risk of manifesting these diseases appears to be related to the amount of asbestos exposure, experts agree that there is no known safe level of exposure. There are recorded incidents of cancer arising from brief exposure. Children appear to be at higher risk than adults for a number of reasons. Their lung tissues are young and still growing. They have higher breathing rates. They play nearer the floor and are more likely to handle loose material and stir up fibers that have settled on surfaces. Also, they have a longer life span. Asbestos-induced cancers may develop 20 to 40 years after exposure, so exposure early in life allows a much greater opportunity for diseases to appear.

Asbestos was used in several types of building materials before its use in these products was prohibited by the EPA in the early 1970's. Common asbestos-containing materials in schools and other buildings include pipe and boiler insulation, sprayed-or troweled-on fireproofing and insulation, and acoustical plaster. These forms of asbetos-containing material often are friable—that is, capable of being pulverized or reduced to powder by hand pressure. Water damage, vandalism, or disturbance related to routine maintenance, renovation or repair can cause the asbestos-containing material to fall apart. School children and teachers are exposed to asbestos from damaged materials in classrooms and other general use areas of school buildings. School maintenance workers often are exposed to much higher levels of asbestos during maintenance and repair of asbestos containing materials or when working in crawl spaces, above suspended ceilings, or in other confined areas where asbestos fibers have accumulated.

The Environmental Protection Agency recognized the problem of asbestos in schools in the mid-1970's. In 1978, EPA initiated a Technical Assistance Program to encourage voluntary recognition and remedy of asbestos problems. The Agency sent educational materials and technical information to all school districts and urged

school officials to take appropriate preventive and remedial action. Unfortunately, compliance with this voluntary program was poor.

In 1982, the Agency promulgated rules requiring all public and private schools to conduct a one-time inspection for asbestos, keep appropriate records, and notify parents and school employees if friable asbestos was found. EPA did publish technical guidance manuals describing how to recognize asbestos in a hazardous condition and describing different types of abatement actions, including repair, encapsulation, enclosure and removal. However, the inspection rule did not actually require that any action be taken to abate hazardous asbestos, nor did it provide enforceable standards for determining whether immediate abatement was called for.

Audits of this program also have revealed serious problems. Three years after the date by which all schools were to have been inspected fully, the Agency estimates a non-compliance rate of over sixty percent. Many schools simply did not carry out inspections or failed to inspect all areas within school buildings. The most common error was to ignore boiler rooms and other maintenance areas. These are the locations where asbestos is most likely to be found. Also, school officials and other interested parties, such as teachers unions and the Parent/Teachers Association, have complained about the lack of abatement standards. In some cases, school officials ignored or delayed abatement of hazardous asbestos that required immediate attention. In other cases public pressure forced the removal of all asbestos-containing materials from schools, without regard to the condition of the material. Often less expensive interim abatement alternatives such as repair, encapsulation, or enclosure would have been technically acceptable and less expensive in the near term. (Under Clean Air Act rules issues by EPA, all asbestos-containing material must be removed from a building before it is demolished or renovated in such a way that the material is disturbed. Thus, sooner or later all asbestos must be removed.) To make matters worse, removals in some cases were attempted by unqualified persons who exposed themselves and possibly building occupants to unnecessary risks.

Though EPA has not established enforceable standards for abatement of hazardous asbestos, the Agency has published a series of guidance manuals with the help of panels of experts. The guidance manuals discuss how to inspect for asbestos-containing material, how to analyze for the asbestos content of samples of building materials, and the options that are available when asbestos is found to be present. The abatement options are varied, and the choice of a preferred action depends upon factors such as the condition of the asbestos, its location, and present and future activities at that location. In some circumstances, no immediate abatement action is required. It is sufficient for the time being to monitor the condition of the asbestos and inform employees about the dangers of disturbing it. In other cases, repair of damaged asbestos or enclosure of asbestos-containing materials to prevent damage may be appropriate. Sometimes chemical encapsulants are used to penetrate the material and harden to prevent deterioration. In other cases, of course, the asbestos containing material should be removed immediately, a procedure involving special protective clothing for abatement workers and the use of specialized equipment.

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The Agency's guidance manuals recommended making these determinations on the basis of the physical condition of the asbestos rather than on measurements of actual concentrations of asbestos fibers in the air. Air monitoring has several technical drawbacks that hinder its usefulness for deciding whether abatement is needed. An air sample can only provide information about the location of the monitor and the time period it is operating. It easily can miss peak air fiber concentration levels resulting from periodic activities that disturb asbestos fibers that have settled out of the air. EPA estimates that peak exposures in school buildings may be 1000 times higher than normal or routine exposures. Also, certain analytical techniques require that air filters be handled in ways that break up the fibers into pieces too small to be seen by some types of microscopes commonly used for analysis. For both these reasons, EPA believes that air monitoring is likely to give "false negative" results and lead to a false sense of security that discourages needed actions to abate risk.

Another Federal response to the problem of asbestos in schools is the Asbestos School Hazard Abatement Act of 1984. This program, enacted by Congress as Title V, of the Education and Economic Security Act, authorized $100 million per year through fiscal year 1990 for asbestos response action grants and interest-free loans to assist schools in cleaning up friable asbestos-containing material. The program is aimed at supporting asbestos cleanup efforts in schools that can demonstrate financial need. To date, over $100 million has been appropriated under this Act.

Summary of Bill

The bill reported here is designed to remedy the major problems identified in the EPA's present asbestos-in-schools-program. First, it requires the Agency to publish national standards for asbestos inspection, determining when asbestos-containing material is hazardous, and deciding what abatement action to take in response. When asbestos that does not require abatement is found, the standards will call for an operation and maintenance plan based on employee education and periodic reinspection.

Second, the bill calls for State accreditation of asbestos contractors to assure that only competent persons do asbestos work.

The need for these elements—national uniform standards and contractor acreditation—has been stated strongly by all parties, including school officials, parents, teachers, and the manufacturers of the asbestos-containing products.

Third, the bill requires that the standards actually be followed. School districts that responded adequately to the voluntary program or the subsequent inspection rule are not covered by the bill. But those school districts that have not yet taken proper action under these programs are required to inspect for asbestos and, if asbestos is found, to follow through with an asbestos management plan that includes the proper mix of operation and maintenance activities and abatement, depending on the circumstances at the school.

The Act, like other comparable laws, requires that standards be established and followed. It is silent on, and does not address, the

question of whether, how, or on what basis those standards might find their way into other proceedings, such as ongoing litigation involving school districts and asbestos product manufacturers. These questions are to be determined by the courts of the various jurisdictions under other existing law. It is not the purpose of the legislation to affect ongoing litigation involving such school districts and asbestos manufacturers.

SECTION-BY-SECTION ANALYSIS

SHORT TITLE

Section 1 states that this Act may be cited as the Asbestos Hazard Emergency Response Act of 1986.

AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT

Section 2 establishes a new title II, entitled "Asbestos Hazard Emergency Response," in the Toxic Substances Control Act. This new title II contains provisions described below.

CONGRESSIONAL FINDINGS AND PURPOSE

Congressional Findings and Purpose Section 201 states a series of Congressional findings: That the existing Environmental Protection Agency regulatory program related to asbestos in schools lacks standards for asbestos identification and decisions when asbestos is hazardous. As a result, some schools have not taken proper action to abate present hazards, while others may have undertaken action that is inappropriate.

The purposes of the title are to require the establishment of Federal standards for inspecting for asbestos and to require appropriate abatement measures when asbestos in a hazardous condition is found.

DEFINITION OF ASBESTOS; ABATEMENT; AND GUIDANCE DOCUMENT

Section 202 contains definitions of key terms. It also requires the Environmental Protection Agency to publish a series of standards upon which the program is based. These include standards for inspecting for asbestos and standards for determinating when asbestos-containing material is hazardous. The regulations must require abatement of hazardous asbestos when it is found. Standards will define the types of abatement that are appropriate in different circumstances and the extent of abatement necessary. At a minimum, asbestos containing material will be considered hazardous if it is friable, and if it is either in a deteriorated condition or is readily accessible, in circumstances that present a reasonable likelihood of human exposure.

In determining that asbestos containing material presents a reasonable likelihood of exposure, the Administrator is to consider the physical circumstances of the material, including its condition or location, or both. It is not necessary to establish this likelihood by air monitoring.

This section also requires the publication of regulations requiring abatement in conformance with the standards described above, as

well as standards for performing asbestos abatement work. These standards will determine when abatement is complete, and they will provide for protection of workers and building occupants during all phase of activity, including any long term operation and maintenance activity.

Asbestos which is found not to be hazardous, as well as hazardous asbestos that is abated by repair, enclosure or encapsulation, must be covered by an operation and maintenance plan. This plan must provide for labelling and periodic reinspection of the asbestos-containing material and for education and protection of employees who may come into contact with the asbestos.

Finally, the EPA regulations must include standards for transportation and disposal of asbestos-containing debris, including requirements related to loading and unloading to assure the physical integrity of containers of asbestos-contaminated debris.

Recognizing that the Agency often fails to meet statutory deadlines for the promulgation of regulations, this section also establishes standards that will apply from the deadline for publication of standards until the required standards are published. Subsection (c) describes hazardous asbestos in terms its degree of physical deterioration. Subsection (d) requires abatement in accordance with the most recent version of EPA's technical guidance manual. It also requires that interior asbestos ambient concentration not exceed ambient exterior concentration after abatement is completed. In the absence of reliable measurements of ambient exterior concentrations, this subsection provides fiber concentration levels to be used for purposes of the required comparison. These fiber concentrations reflect those typically found in urban environments.

Subsection (e) requires that if EPA fails to publish regulations regarding disposal of asbestos, disposal will be in accordance with the latest version of disposal guidance.

MODEL CONTRACTOR ACCREDITATION PROGRAM

Section 203 requires EPA to develop a model contractor accreditation program for use by the States. The program must include training in a number of areas related to asbestos identification, use of protective equipment, and abatement techniques. It is important to recognize that the term "asbestos contractor" is defined very broadly. It includes persons who inspect for asbestos, develop asbestos management plans, including operation and maintenance plans, write specifications for asbestos work and perform asbestos abatement activities. Thus, this term would include, for example, salaried employees who perform these functions even though they are not contractors in the usual sense. The purpose of this broad definition and the accreditation requirement is to assure that all persons who must make technical decisions regarding asbestos and who work around asbestos are properly trained.

Following adoption of the model contractor accreditation plan, each state is to adopt a plan as least as stringent as the model. The Secretary of Defense shall adopt such a plan for use by the Armed Forces.

Subsection (c) provides that a person doing asbestos work in a State that has not adopted an accreditation plan must be accredited in another State before carrying out any asbestos work.

Subsection (d) authorizes the Administrator to designate training courses that are equivalent to the contractor accreditation program required by this section. A person who has completed and achieved a passing grade in such a designated course will be considered accredited for the purposes of this title until a date one year after the date on which the State in which the person is employed establishes an accreditation program. This provision is needed to assure the continued availability of persons already properly trained to do asbestos work, while providing ample time for individuals to become State-accredited once a State program is established. The Administrator may designate training programs operated by States, private entities, associations, or universities, at the Administrator's discretion.

Subsection (e) provides that schools applying for aid under the Asbestos School Hazard Abatement Act of 1984 are not eligible for such aid if they use any person for asbestos work who is not accredited as described above. This requirement takes affect with regard to any financial assistance awarded more than one year after the date of enactment of this title.

STATE GOVERNOR ASBESTOS REVIEW

Section 204 requires State Governors to establish administrative procedures for carrying out duties assigned under sections 205 and 206, described below.

CERTIFICATION OF SCHOOL INSPECTION AND ABATEMENT

Section 205 requires that, within 12 months of enactment, each local education agency submit a written certification to the Governor with respect to previous asbestos inspections and abatement in schools under its authority. The certification must cover each school building and specify whether a previous inspection included the boiler room. The boiler room is mentioned specifically in the bill because program audits have shown that many schools failed to include boiler rooms in a previous inspection required by EPA rules. If an inspection was conducted, the certification must include the dates of inspection, information about each inspector (including qualifications), a description of the areas inspected and results of the inspection, and information about the laboratory that analyzed bulk samples of building material or air samples for asbestos. The certification also must describe any abatement actions taken, including the location and nature of the action and information about the person performing the abatement action, including his or her qualifications.

Subsection (b) requires this certification to be available in the offices of the local education agency for inspection by the public.

The purpose of the certification requirement is to document asbestos inspection and abatement that took place prior to enactment of this title. This step is necessary to avoid duplication of effort and unnecessary expense that would result from needless reinspection of areas of buildings that already have been inspected adequately

and found to contain no asbestos, or areas from which all asbestos has been removed. In fact, the definition of "covered local education agency" in section 213 is written to exclude from the requirements of this Act those schools which the local education agency certifies to have been found to contain no asbestos or from which all asbestos has been removed. Similarly, the asbestos inspection required by section 206 excludes areas of buildings known to be asbestos-free. Of course, this subsection does not preclude the Administrator from requiring reinspection or determining circumstances under which the required certification properly can be executed. For example, the Administrator may determine that certain inspection and analytical techniques used in some schools are unreliable and that use of such techniques does not permit a determination that a building contains no asbestos.

The certification requirement described above calls for submission of information related to the qualifications of persons inspecting for and abating asbestos as well as of laboratories performing analyses to detect asbestos fibers. The local education agency, the Governor and the Administrator should consider these qualifications as well in determining whether to reinspect for asbestos because of the possibility that asbestos unwittingly may have been undetected or incompletely abated by unqualified persons.

INSPECTION; ASBESTOS MANAGEMENT PLANS

Section 206 of the bill contains the key requirements related to inspection and development of asbestos management plans. It requires that, within 180 days after the deadline for publication of the regulations and standards required by section 202, each local education agency must inspect for asbestos in all areas of each school building not certified under section 205 to be asbestos-free. This inspection would include re-inspection of areas known from a previous inspection to contain asbestos, but from which the asbestos has not been removed. The purpose of this reinspection is to ascertain the present condition of asbestos-containing material so that an asbestos management plan can be based on up-to-date information.

Subsection (b) requires local education agencies, within 12 months of the deadline for EPA publication of standards under section 202, to develop an asbestos management plan covering all asbestos-containing material in schools under their authority. The asbestos management plan must comply with the EPA standards. It must include plans and commitments for abatement of asbestos-containing material found to be hazardous and an operation and maintenance plan for asbestos-containing material found not to be hazardous.

Subsection (b) also prescribes the required content of a management plan, which include a description of the results of the asbestos inspection, measures to be taken to abate any hazardous asbestos found, information regarding procedures used to select persons who performed the inspection and who will perform any needed abatement projects, a description of non-hazardous asbestos-containing material in the schools, and an operation and maintenance plan covering such material.

A particular school may be omitted from the asbestos management plan if the local education agency determines that all asbestos-containing material has been removed from it. In order to avoid delay, an asbestos management plan can be submitted in stages, with each submission covering only a portion of the schools under the authority of the local education agency.

Each plan must contain a statement signed by an accredited asbestos contractor that he or she either prepared or assisted in the development of the plan, or reviewed the plan, and that the plan complies with current regulation and standards under section 202 and other applicable provisions of law. The person signing this statement need not, of course, be a person who will be involved in any subsequent projects performed pursuant to the plan.

The completed management plan must be submitted to the Governor, and parents and school employees must be notified of the existence of the plan and of their right to comment to the Governor about it. Subsection (c) authorizes a Governor to disapprove a plan on the basis of its unsuitability to the problem identified, its failure to assure the use of accredited contractors, non-conformance with applicable regulations, or unreasonableness and untimeliness of any abatement schedule in the plan. If the Governor disapproves a plan, the local education agency must revise the plan accordingly.

This provision allows a Governor to disapprove a plan, but it does not require the Governor's approval before a plan may be implemented. In fact, subsection (d) requires the local education agency to implement the plan if the Governor has not disapproved it within 60 days of submittal. The local education agency must implement the plan within 12 months after its submission to the Governor and must certify in writing to the Governor that the plan has been implemented.

Subsection (e) requires that the management plan be available for inspection by the public in the administrative offices of the local education agency.

Subsection (f) authorizes the Administrator of EPA to waive the requirements of section 204 (requiring the Governor of each State to establish, within 180 days, administrative procedures to carry out portions of this Act) and section 206 (mandatory inspection, development and implementation of management plans after enactment of this Act) if the State is implementing a program that contains requirements that are substantially equivalent to those of sections 204 and 206. This amendment does not authorize the Administrator to waive the substantive standards of section 202.

This provision is needed because a few Sates have active, aggressive inspection and abatement programs already in place. Although all States must, at a minimum, satisfy the substantive federal standards that are called for in this bill, it is not likely that such standards will exist for several months. Those few States that have adequate programs should be encouraged to go forward without having to fear that they will be forced to reinvent the wheel and, for example, reinspect every school building that was adequately inspected before EPA's standards were promulgated.

ENVIRONMENTAL PROTECTION AGENCY RESPONSE AUTHORITY

Section 207 authorizes the Administrator of the Environmental Protection Agency and the Governor of a State to act to abate hazardous asbestos in a school building when either official determines that the presence of the asbestos may present an imminent and substantial endangerment to human health and the local education agency is not taking sufficient action, consistent with the standards under section 202, to abate the hazardous asbestos.

Subsection (b) provides the Administrator may seek reimbursement from a local education agency or any other potentially responsible party in a court of the United States for all costs of abatement incurred by the United States Government under this section. Nothing in this section creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

When the Administrator seeks reimbursement as described above from a local education agency, the action must be filed in the judicial district in which the abatement action occurred.

ABATEMENT ACTION

Section 208 provides additional abatement authority. When the Administrator or Governor determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of asbestos in a school building, the Administrator may request the Attorney General to act, or the Governor may act, to secure relief to abate the danger. Authority to grant relief, including injunctive relief, lies with the United States district court in the district in which the threat occurs.

PUBLIC PROTECTION

Section 209 provides that no State or local education agency may discriminate against any employee for poviding information related to a potential violation of this title. Any person who believes he or she has been fired or otherwise discriminated against in violation of this requirement may apply to the Secretary of Labor within 90 days for a review in accordance with section 11(c) of the Occupational Safety and Health Act.

POLLUTION INSURANCE

Section 210 authorizes the creation of risk retention programs for insuring liabilty for injuries arising from the release of asbestos. The effect of this amendment would be to allow groups of individuals or firms to share liability for damages caused by asbestos release. The authority to establish pollution liability risk retention groups authorized by this section is virtually identical to the authority to insure product liability risks granted under the Product Liability Risk Retention Act of 1981 and to an amendment to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) recently adopted by House and Senate conferees on the reauthorization of that Act.

This section authorizes a pollution liability risk retention group to sell only pollution liability insurance and offer that insurance only to its own members. It may not sell insurance to the public and it may not offer automoblie, life or health insurance either to its own members or the public. Thus, the insurance authority granted under this section is limited to insuring the pollution liability risks of firms that join together to establish a risk retention group.

In addition to authorizing risk retention groups, the amendment also authorizes establishing pollution liability "purchasing groups." A purchasing group is a group of firms that join together to purchase pollution liability insurance on a group basis. If their experience, safety standards, or technology demonstrate that they are a preferred risk, the group may be able to obtain pollution liability insurance coverage on a favorable basis. This section provides that a pollution liability purchasing group is exempt from all regulations which prohibit or restrict the sale of insurance on a group basis.

Finally, pollution liability is defined as "liability for injuries arising from the release of asbestos". This definition should be broadly construed to cover all liability arising out of release of asbestos. This provision authorizes coverage for sudden and accidental, as well as gradual pollution claims.

Of course, if private insurance is available or the commerical insurance market revives, individuals would still be free to purchase that coverage, and many undoubtedly would choose to do so. But, if commercial insurance is not available, they would be able to band together to provide their own pollution liability insurance coverage.

These provisions are needed because the general unavailability of liability insurance is hampering the activities of qualified asbestos inspection and abatement companies and impeding projects that are needed to protect the health of school children and employees.

ENFORCEMENT CONSIDERATIONS

Section 211 directs the Administrator to consider certain factors in determining the amount of civil penalty to be assessed against a local education agency under section 16 of TSCA for violation of any of the provisions of this title. These include the significance of the violation, the culpability of the violator, ability to pay the penalty, and ability of the violator to continue to provide educational services to the community.

PREEMPTION

Section 212(a) provides that this title does not preempt a State from imposing any additional liability or requirements with respect to asbestos or asbestos-containing material.

Subsection (b) clarifies that nothing in this title, or any standard, regulation or requirement promulgated under this title, shall be construed to preclude any court from awarding costs and damages associated with the abatement of asbestos-containing material at

any time prior to the actual date on which such material is removed.

As described above, the Environmental Protection Agency under this title will promulgate regulations for the abatement of hazardous asbestos-containing material and for the maintenance of other asbestos in school buildings. These regulations may provide that the asbestos be left in place for a time, as an adequate operations and maintenance program or abatement that involves encapsulation, enclosure, or repair rather than removal may minimize the risk posed to building occupants. Nevertheless, at some point in the future the asbestos will need to be removed and the owner of the building will bear the costs of removal.

Many building owners have sought to recover the costs of removal and other abatement actions from the manufacturer of the asbestos product or from the contractor who installed the material at the site. These cost recovery actions are subject to statutes of limitations at the State level. Section 212(b) is a "savings clause" to assure that the regulations for abatement or operations and maintenance promulgated by EPA do not interfere with the right of a building owner to bring suit to recover the entire cost of asbestos abatement including the full cost of removal which may occur at some point in the future.

The "savings clause" does not preempt State statutes of limitations, nor does it create any Federal cause of action. Rather the provision provides that if a building owner should seek to recover the full cost of operations and maintenance or abatement, including the cost of removal, before such costs are actually incurred, a court should not interpret or construe the provisions of this title, or regulations promulgated pursuant to this title, as indicating that removal costs or any other reasonable costs or damages associated with operations and maintenance or abatement would be inappropriate or unnecessary.

DEFINITIONS

Section 213 contains definitions, the most important of which is the definition of "local education agency." The definition of "local education agency" includes three parts. First, it includes local education agencies as defined in section 198 of the Elementary and Secondary Education Act of 1965. Second, it includes the owner of any non-profit elementary or secondary school. The term "owner" is used to assure that the requirement of this title apply to persons who actually own the school buildings. These persons may be different from the entity that governs operation of the school. Third, the definition includes the governing authority of impact aid schools operated for children of members of the Armed Forces. This part of the definition assures that equal protection is applied to children of members of the Armed Forces.

As described earlier, this section also contains a definition of "covered local education agency." This term includes a local education agency which has under its authority schools which have not been inspected for asbestos or for which it is not able to certify that an inspection adequately covered all areas of school buildings, as

well as schools which were inspected and are known to contain asbestos-containing materials.

SECRETARY OF DEFENSE TO ACT IN LIEU OF STATE GOVERNOR

Section 214 states that the various duties assigned to Governors of States shall be construed as having been imposed on the Secretary of Defense with respect to impact aid schools.

OVERSEAS SCHOOLS OF DEPARTMENT OF DEFENSE

Section 215 applies to buildings used by the Department of Defense as overseas schools for dependents of employees of the Department of Defense. It requires the Secretary of Defense, to the extent feasible and consistent with the national security, to perform the various inspection and abatement functions required by this title in a manner comparable to that required of local education agencies. The Secretary of Defense and the Administrator shall issue such regulations as are necessary to carry out the provisions of this section.

The foregoing discussion describes the provisions of the new title II of the Toxic Substances Control Act that would be established by this bill. In addition to these provisions, the bill makes a number of other amendments to TSCA and to the Asbestos School Hazard Abatement Act (ASHAA), as described below.

TECHNICAL AND CONFORMING AMENDMENTS

Section 3 of the bill contains various technical and conforming amendments to TSCA.

AUTHORIZATION

Section 4 amends ASHAA to authorize an appropriation of $25 million out of the Asbestos Trust Fund created by section 5 for each of fiscal years 1987, 1988, 1989, and 1990.

ASBESTOS TRUST FUND

Section 5 establishes the Asbestos Trust Fund referred to above. The Trust Fund will include funds equivalent to funds repaid to the Treasury as repayment of loans made under section 505 of ASHAA and any amounts recovered by the United States Government under the cost recovery provision of section 207(b) of this title. The Trust Fund is to be managed by the Secretary of the Treasury, who may invest funds not needed to meet current withdrawals in interest-bearing obligations of the United States.

The Trust Fund may be used only for purposes of carrying out the ASHAA assistance program.

Subsection (e) authorizes an appropriation to the Trust Fund, as repayable advances of $25 million for each of fiscal years 1987, 1988, 1989, and 1990. These advances are to be repaid to the general fund of the Treasury with interest determined by the Secretary of the Treasury.

These amendments made by this section shall take effect on January 1, 1987.

RESERVATION OF LOAN FUNDS

Section 6 of the bill amends ASHAA to provide that, for fiscal years 1987 and 1988, ten percent of funds appropriated under ASHAA or $10 million, whichever is less, will be reserved for financial assistance grants to States or local education agencies. These grants, which are available to both public and private school districts, are to defray the expenses associated with carrying out the provisions of sections 205 and 206 of this title. The funds are to be reserved from funds otherwise used to provide loans under ASHAA. EPA distributes 50 percent of the ASHAA funds for loans to local education agencies and 50 percent for grants. The amendment ensures that the set-aside will not reduce the amount of funds available for ASHAA grants to financially needy school districts.

HEARINGS

The full Committee held a hearing on July 12, 1985 on the status of the Environmental Protection Agency's efforts to control asbestos in schools and other public buildings. This hearing included oversight of the Asbestos School Hazard Abatement Act. The Subcommittee on Toxic Substances and Environmental Oversight held a hearing on S. 2083 and S. 2300 on May 15, 1986. S. 2300 is a related bill involving regulation of hazardous asbestos-containing material in buildings other than schools. The subcommittee held a mark-up session on S. 2083 on June 19, 1986. The full Committee marked up S. 2083 on August 12 and voted to order the bill reported.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During the Committee's consideration of this bill, one rollcall vote was taken. The Committee voted 15–0 to report the bill favorably to the Senate. Voting in the affirmative to report S. 2083 to the Senate were Senators Abdnor, Baucus, Bentsen, Burdick, Chafee, Domenici, Durenberger, Hart, Humphrey, Lautenberg, Mitchell, Moynihan, Simpson, Stafford, and Symms.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill by the Congressional Budget Office. That report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 3, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2083, the Asbestos Hazard Emergency Response Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2083.
2. Bill title: Asbestos Hazard Emergency Response Act of 1986.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, August 12, 1986.
4. Bill purpose: S. 2083 would amend the Toxic Substances Control Act and the Asbestos School Hazard Abatement Act of 1984 to expand current federal and local responsibilities relating to asbestos hazards. The bill would direct the Environmental Protection Agency (EPA) to promulgate regulations for local school hazard abatement activities, including facility inspection, implemention of response actions, and periodic reinspection. The EPA would also be required to develop a model contractor accreditation program for states.

Section 5 of the bill would create the Asbestos Trust Fund in the U.S. Treasury. Amounts received from the repayment of loans made under the Asbestos School Hazard Abatement Act of 1984 would be transferred to the new fund, which would also receive a $25 million advance from the general fund for each of the fiscal years 1987 through 1990. The bill would authorize appropriations from the fund of a like amount in each of those years. These funds would be in addition to any funds authorized for appropriation under the 1984 act ($100 million a year through 1990) and would be used to finance federal and local abatement efforts required by the bill.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Estimated authorization level	29	28	27	26	.....
Estimated outlays	16	26	22	27	21

Note: The costs of this bill fall within budget function 300.

Basis of Estimate:

For purposes of this estimate, CBO has assumed that S. 2083 will be enacted prior to the beginning of fiscal year 1987 and that the full amounts authorized will be appropriated for each fiscal year. Additional authorization levels have been estimated for EPA regulatory activities, including the promulgation of regulations under Title 2 and annual compliance monitoring. These costs are estimated to be about $4 million in 1987 and $3 million to $4 million annually in subsequent years.

Also, beginning in fiscal year 1989 the authorization level has been reduced to account for repayments on loans made under the bill. For the purposes of this estimate, CBO has assumed that these repayments would reflect the same terms as those made under the 1984 act—repayments over 18 years, without interest, beginning two years after award. First year (1989) repayments are expected to be less than $1 million, growing to about $3 million by 1991.

Outlays for loans, grants, and administrative expenses have been estimated on the basis of historical spending patterns and information obtained from the EPA. Spending levels have been estimated assuming the same proportional split between loans and grants as for the current programs for fiscal years 1989 through 1991. For fiscal years 1987 and 1988, this split has been adjusted to account for Section 6, which would require that a maximum of $10 million a year be removed from the loan portion and used for grants to carry out the certification and management plan program. The effect to Section 6 is to increase outlays by about $5 million in 1987 and decrease them in later years, because of differences in spending rates between loans and grants.

6. Estimated cost to State and local governments: S. 2083 would direct the EPA to impose stringent new requirements on local school authorities in their efforts to abate asbestos hazards. The bill would provide an additional $25 million a year to the schools to help them in carrying out their programs. These funds, which would be distributed on the basis of financial need, would supplement appropriations authorized under the 1984 act.

In addition to new local requirements, the bill would also expand the states' duties. As under current law, the states would continue to act in a middle-man capacity, collecting data and submissions from school authorities and conveying them to the EPA. In addition, the states would be required to review school management plans and establish contractor accreditation programs. The bill would permit a maximum of 10 percent or $10 million of any appropriations under the amended 1984 Act to be used for the purposes of providing grants to state and local governments for these purposes.

At present, CBO has not completed its analysis of these requirements on state and local government budgets. This estimate will be submitted separately at a later date.

7. Estimate comparison: None.

8. Previous CBO estimate: On August 1, 1986, CBO prepared a cost estimate for H.R. 5073, as ordered reported by the House Committee on Energy and Commerce on July 29, 1986. This estimate is identical to our earlier one, except for changes made to reflect the

impact of Section 6, as described above, and a smaller estimate of EPA regulatory costs.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Evaluation of Regulatory Impact

In compliance with the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the legislation.

This bill does not expand significantly the number or classes of entities subject to regulation under the Environmental Protection Agency's current program to identify hazardous asbestos in schools. It does extend the present regulatory regime to require targeted reinspection of certain schools and to require that appropriate actions be taken to manage asbestos that is found, including abatement of hazardous asbestos.

The Committee has made an effort to avoid redundancy in the reinspection requirements by allowing schools that already have determined adequately that no asbestos is present to certify that result and therefore not be subject to reinspection requirements.

Changes in Existing Law

In compliance with Section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

Toxic Substances Contol Act

(Public Law 94-469)

TITLE I—CONTROL OF TOXIC SUBSTANCES

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Toxic Substances Control Act".

TABLE OF CONTENTS

TITLE I—CONTROL OF TOXIC SUBSTANCES

Sec. 1. Short title and table of contents.
Sec. 2. Findings, policy, and intent.
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Sec. 4. Testing of chemical substances and mixtures.
Sec. 5. Manufacturing and processing notices.
Sec. 6. Regulation of hazardous chemical substances and mixtures.
Sec. 7. Imminent hazards.
Sec. 8. Reporting and retention of information.
Sec. 9. Relationship to other Federal laws.
Sec. 10. Research, development, collection,dissemination, and utilization of data.
Sec. 11. Inspections and subpoenas.
Sec. 12. Exports.
Sec. 13. Entry into customs territory of the United States.
Sec. 14. Disclosure of data.
Sec. 15. Prohibited acts.
Sec. 16. Penalties.
Sec. 17. Specific enforcement and seizure.

Sec. 18. Preemption.
Sec. 19. Judicial review.
Sec. 20. Citizens' civil actions.
Sec. 21. Citizens' petitions.
Sec. 22. National defense waiver.
Sec. 23. Employee protection.
Sec. 24. Employment effects.
Sec. 25. Studies.
Sec. 26. Administration of the Act.
Sec. 27. Development and evaluation of test methods.
Sec. 28. State programs.
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Sec. 31. Effective date.

TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

Sec. 201. Congressional findings and purpose.
Sec. 202. Definition of asbestos, abatement, and guidance.
Sec. 203. Model contractor accreditation plan.
Sec. 204. State Governor asbestos review.
Sec. 205. Certification of school inspection and abatement.
Sec. 206. Inspection; asbestos management plans.
Sec. 207. Environmental Protection Agency response authority.
Sec. 208. Abatement action.
Sec. 209. Public protection.
Sec. 210. Pollution insurance.
Sec. 211. Enforcement considerations.
Sec. 212. Preemption.
Sec. 213. Definitions.
Sec. 214. Secretary of Defense to act in lieu of State governor.
Sec. 215. Overseas schools of Department of Defense.

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SEC. 15. PROHIBITED ACTS.

It shall be unlawful for any person to—

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 4, (B) any requirement prescribed by section 5 or 6, [or] (C) any rule promulgated or order issued under section 5 or 6[;], *or (D) any requirement established by title II or any rule promulgated or order issued under title II;*

* * * * * * *

TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

SEC. 201. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Environmental Protection Agency's rule on inspection and notification of asbestos hazards has neither standards for the proper identification of asbestos and abatement of friable asbestos-containing material, nor a requirement that friable asbestos-containing material be abated in a safe and complete manner once it is discovered.

(2) There is no uniform program for accrediting persons involved in asbestos identification and abatement, nor are local education agencies required to use accredited contractors for asbestos work.

(3) As a result, some schools have taken no action at all to abate hazardous asbestos while others have undertaken expensive abatement projects with no regulatory guidance from the

Environmental Protection Agency as to whether the actions are necessary, adequate, or safe. Thus, the danger of exposure to asbestos continues to exist in many schools, and some exposure actually may have increased due to the lack of Federal standards for asbestos abatement and the lack of requirements that competent contractors be used to perform asbestos abatement.

(b) PURPOSES.—The purposes of this title are—

(1) to provide for the establishment of Federal regulations which require inspection for asbestos and the abatement of hazardous asbestos-containing material in the Nation's schools in safe and complete manner;

(2) to establish standards for the development of operation and maintenance plans to prevent exposure to asbestos remaining in a school building after abatement; and

(3) to mandate safe and complete periodic reinspection of school buildings following abatement.

SEC. 202. DEFINITION OF ASBESTOS; ABATEMENT; AND GUIDANCE DOCUMENT.

(a) IN GENERAL.—For purposes of this title, the term—

(1) "asbestos" means asbestiform varieties of—

(A) chrysotile (serpentine),

(B) crocidolite (riebeckite),

(C) amosite (cummingtonite-grunerite),

(D) anthophyllite,

(E) tremolite, or

(F) actinolite;

(2) "asbestos-containing material" means any material which contains more than 1 percent asbestos by weight;

(3) "friable asbestos-containing material" means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure;

(4) "abatement" means enclosure, encapsulation, repair or removal of asbestos-containing material; and

(5) "accredited asbestos contractor" means a person, accredited pursuant to the provisions of section 203, who inspects for asbestos-containing material, develops asbestos management plans, or performs asbestos abatement activities.

(b) EPA REGULATIONS ON IDENTIFICATION AND ABATEMENT OF ASBESTOS.—Within 12 calendar months after the date of the enactment of this title, the Administrator shall promulgate the following:

(1) Regulations which prescribe procedures, including the use of trained personnel, for determining whether asbestos-containing material are present in a school building.

(2) Regulations which prescribe standards for the circumstances under which the presence of asbestos-containing material in a school building shall be considered hazardous, describing different types of abatement, and defining the circumstances under which different types of abatement are required, including the extent of abatement necessary. In any standard

under this paragraph, asbestos-containing material shall be considered hazardous if, at a minimum, it is friable and is—

(A) damaged, deteriorated or delaminated; or

(B) readily accessible to building occupants including service and maintenance personnel, in the course of their normal activities;

in circumstances that present a reasonable likelihood of exposure to asbestos fibers.

(3) Regulations which mandate abatement, in accordance with standards prescribed under paragraph (4), or hazardous asbestos-containing material found in any school building, as determined in accordance with standards prescribed under paragraphs (1) and (2).

(4) Regulations which prescribe standards for performance of asbestos abatement activities in school buildings and for determination of when the hazard has been abated. Such regulations shall include standards for protection for both workers and building occupants, for the following phases of abatement activity:

(A) Inspection.

(B) Abatement.

(C) Post-abatement, including any long term operation and maintenance activity.

(5) Regulations which prescribe standards for the development and execution of an operation and maintenance plan with respect to asbestos-containing material which is not removed from a school building. Such plan shall include—

(A) an identification of the location of asbestos-containing material in the school building;

(B) provisions for surveillance and periodic reinspection of such asbestos-containing material;

(C) provisions for education of school employees, including school service and maintenance personnel, about the location of and safety procedures with respect to such asbestos-containing material; and

(D) provisions for identifying with a warning label any friable asbestos-containing material that is located in areas not normally frequented by students and which might be damaged by the activities of persons in such areas. The warning label shall read, in print which is readily visible because of large size or bright color, as follows: "CAUTION: ASBESTOS-CONTAINING MATERIAL. BREATHING ASBESTOS DUST MAY CAUSE CANCER. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT" (or words to that effect).

(6) Regulations which prescribe such standards for transportation and disposal of waste asbestos-containing material as may be necessary to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste materials.

(c) HAZARDOUS ASBESTOS STANDARD IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regu-

lations under subsections (b) (1) and (2) within the prescribed period, any asbestos-containing material which exists in the school building shall be considered hazardous if the asbestos-containing material is visibly damaged, with portions of the material dislodged, missing, cracked, deteriorated, showing evidence of water damage, or flaking, in any area in the school building where there is a potential for human exposure, including an air plenum. Such standards shall be effective until such time as the Administrator promulgates different standards under regulations under subsections (b) (1) and (2).

(d) ABATEMENT IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsections (b) (3) and (4) within the prescribed period, and asbestos-containing material which is hazardous under the standard described in subsection (c) exists in a school building, the local educational agency with jurisdiction over the school building shall abate such asbestos-containing material in accordance with the most recent version of the Environmental Protection Agency's "Guidance for Controlling Asbestos-Containing Materials in Buildings" (or any successor to such document). The ambient interior concentration of asbestos fibers after the completion of abatement shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. In the absence of reliable measurements, the exterior ambient concentration shall be deemed to be less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used to determine whether the standard has been met, and less than 0.005 fibers per cubic centimeter if a transmission electron microscope is used to determine whether the standard has been met.

(e) TRANSPORTATION AND DISPOSAL STANDARDS IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsection (b)(6) within the prescribed period, any asbetos which is abated within a local educational agency shall be transported and disposed of in accordance with the most recent version of the Environmental Protection Agency's "Asbestos Waste Management Guidance" (or any successor to such document).

SEC. 203. MODEL CONTRACTOR ACCREDITATION PLAN.

(a) MODEL PLAN.—

(1) PERSONS TO BE ACCREDITED.—Within 12 calender months after the date of the enactment of this title, the Administrator shall develop a model accreditation plan for States to give accreditation to persons in the following 3 categories:

(A) Persons who inspect for asbestos in schools within a covered local educational agency.

(B) Persons who prepare management plans for such schools.

(C) Persons who carry out abatement of asbestos in such schools.

(2) PLAN REQUIREMENTS.—The plan shall include a requirement that any person in the categories listed in the preceding sentence achieve a passing grade on an examination and participate in contining education to stay informed about current asbestos inspection and abatement technology. The examination shall demonstrate the knowledge of the person, in areas that the Administrator prescribes in regulations as necessary and ap-

propriate in each of the categories. Such regulations may include requirements for knowledge in the following areas:

(A) Recognition of asbestos and its physical characteristics.

(B) Health hazards of asbestos and the relationship between asbestos exposure and disease.

(C) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos, friability, age deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet methods of abatement.

(D) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.

(E) Appropriate work practices and control methods, including the use of high efficiency particle absolute vacuums, use of amended water and removal encapsulants, and principles of negative air pressure equipment use and procedures.

(F) Preparing a work area for asbestos work, including isolating work areas to prevent bystander or public exposure, decontamination procedures, and procedures for dismantling work areas after completion of work.

(G) Establishing emergency procedures to respond to sudden releases.

(H) Air monitoring requirements and procedures.

(I) Medical surveillance program requirements.

(J) Proper job-specific work practices, including work area preparation, decontamination, emergency procedures, and waste disposal procedures.

(K) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

(b) STATE ADOPTION OF PLAN.—Following the development by the Administrator of a model contractor accreditation plan under subsection (a), each State shall adopt a contractor accreditation plan at least as stringent as that model. In the case of schools operated, pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to impact aid for children of members of the Armed Forces, the Secretary of Defense shall adopt a contractor accreditation plan at least as stringent as that model.

(c) CONTRACTOR IN STATE WHICH HAS NOT ADOPTED A PLAN.—Any person described in subsection (a)(1)—

(1) who plans to carry out any activities described in subsection (a)(1),

(2) more than 180 days after the Administrator has developed a model contractor accreditation plan under subsection (a),

(3) in a State which has not adopted a plan under subsection (b),

must be accredited by another State which has adopted such a plan under subsection (b) before carrying out any of the activities described in subsection (a)(1).

(d) TRAINING COURSES.—The Administrator may designate training courses in asbestos inspection and abatement and the develop-

ment of asbestos management plans that the Administrator determines are equivalent to the contractor accreditation program under subseciton (a). A person who has completed and achieved a passing grade from one of such training courses shall be considered accredited for the purposes of this title until a date that is one year after the date on which the State in which such person is employed establishes an accreditation program pursuant to subsection (b).

(e) FINANCIAL ASSISTANCE CONTINGENT ON USE OF ACCREDITED PERSONS.—A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 is not eligible for such assistance if the school uses any person described in subsection (a)(1) who has not been accredited under a plan based on the model plan developed under subseciton (a). This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 more than 12 calendar months after the date of the enactment of this title.

SEC. 204. STATE GOVERNOR ASBESTOS REVIEW.

Within 180 days after the date of the enactment of this title, the Governor of each State shall establish administrative procedures for carrying out certain provisions described in sections 205 and 206. In establishing such procedures, the Governor shall designate, to carry out the provisions, those State officials who are responsible for implementing environmental protection or other public health programs in the State.

SEC. 205. CERTIFICATION OF SCHOOL INSPECTION AND ABATEMENT.

(a) CERTIFICATION REQUIREMENT.—Within 12 calendar months after the date of the enactment of this title, each local educational agency shall conduct a certification to determine the status of asbestos inspection and abatement carried out prior to the date of the enactment of this title in each school under its authority. A certification shall consist of submitting to the State Governor a written statement, signed by the highest ranking responsible official of the local educational agency, which contains each of the following items:

(1) For each school building, a statement on whether an inspection was conducted to ascertain the presence of any asbestos-containing material in the building, including a specific reference to whether an inspection was conducted in the boiler room of the building. If such an inspection was conducted, the following items of information shall be included in the statement:

(A) The dates of inspection.

(B) The name, address, and qualifications of each inspector.

(C) A description of the specific areas inspected.

(D) The name, address, and qualifications of each laboratory used for analyzing bulk samples or air samples of asbestos.

(E) The results of the inspection.

(2) For each school building, a statement on whether any actions to abate any hazardous asbestos-containing material found to be present were taken, including a specific reference to whether any actions were taken in the boiler room of the build-

ing. If any such abatement action was taken, the following items of information shall be included in the statement:

(A) The location or locations at which the abatement action was taken.

(B) Whether the method of abatement was repair, removal, enclosure, or encapsulation.

(C) The name, address, and qualification of the persons who conducted the abatement action.

(b) PUBLIC AVAILABILITY OF CERTIFICATION.—A copy of the certification required under subsection (a) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

SEC. 206. INSPECTION; ASBESTOS MANAGEMENT PLANS.

(a) INSPECTION.—Within 180 days after the Administrator promulgates regulations under section 202, or, if the Administrator fails to promulgate the regulations within the prescribed period under section 202, within 180 days after the end of such prescribed period, each covered local educational agency shall conduct an inspection for asbestos-containing material in all areas of each school under its authority that were not certified under section 205 to have been inspected previously and found to contain no asbestos-containing material. Each inspection shall comply with the regulations promulgated under section 202(b)(1).

(b) MANAGEMENT PLAN.—

(1) GENERAL REQUIREMENT.—Within 12 calendar months after the Administrator promulgates regulations under section 202, or, if the Administrator fails to promulgate the regulations within the prescribed period under section 202, within 12 calendar months after the end of such prescribed period, each covered local educational agency shall prepare and submit to the State Governor a management plan for abating hazardous asbestos-containing material in school buildings under its authority. Each plan shall provide for timely notification to the appropriate parents of children and employees affected by such plan of the existence of such plan, and of their right to comment to the Governor with respect to such plan. Such plan shall further provide for compliance with the regulations prescribed by the Administrator under sections 202(b) (2), (3), (4), (5), and (6) (or if there are no regulations, the standards in subsections (c), (d), and (e) of section 202) and shall include the following:

(A) A description of the results of the inspection conducted under subsection (a), including the dates of inspection; the names, addresses, and qualifications of inspectors; and a description of the specific areas inspected.

(B) A detailed description of measures to be taken to abate any hazardous asbestos-containing material, including the location or locations at which an abatement action will be taken and the method or methods of abatement to be used.

(C) An evaluation of resources needed to successfully complete abatement and carry out operation and maintenance.

(D)(i) A detailed description of criteria and procedures which were followed in selecting the persons who inspected

for asbestos-containing material and who analyzed the asbestos-containing material in laboratories, and which will be followed in selecting persons to abate the hazardous asbestos-containing material, or

(ii) if the State has adopted a contractor accreditation plan similar to the model contractor accreditation plan developed under section 203, a statement that the local educational agency followed (or will follow) its plan in selecting such persons.

(E) The names of the consultants who contributed to the plan, along with a description of their credentials.

(F) A detailed description of any asbestos-containing material found in the school building which was found not to be hazardous under the regulations prescribed under subsection 202(b) (or the standard in subsection 202(c)).

(G) An operation and maintenance plan developed in accordance with standards prescribed under section 202(b)(5).

(2) EXCEPTION FOR CERTAIN SCHOOLS.—If a covered local educational agency determines that a school under its authority—

(A) conducted an inspection for asbestos which complied with the regulations promulgated under section 202(b)(1),

(B) found asbestos-containing material, and

(C) removed all the asbestos-containing material existing in that school,

the local educational agency may omit that school from the management plan but must include a statement in the plan explaining how that school identified the asbestos-containing material and removed all the asbestos-containing material from the school.

(3) PLAN MAY BE SUBMITTED IN STAGES.—A covered local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the school buildings under the authority of the agency.

(4) MANAGEMENT PLAN ACCREDITATION.—Each such management plan shall contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to section 202(b) of this title, and other applicable provisions of law.

(c) STATE ACTION.—The State Governor may disapprove a management plan submitted under this section within 60 days after the date of receipt of the plan. Disapproval shall be based on—

(1) a determination that the plan is not suited to the problem identified;

(2) its failure to assure that contractors accredited pursuant to this title will be used to carry out such plan;

(3) its failure to conform to regulations under section 202(a) on asbestos inspection and abatement (or with the standards in sections 202 (b) and (c) if there are no regulations); and

(4) the unreasonableness and untimeliness of the abatement schedule, taking into account circumstances relevant to the speed at which the hazardous asbestos-containing material should be abated, including public exposure to the hazard while the asbestos-containing material remains unabated.

If the State Governor disapproves a plan, the State Governor shall explain in writing to the covered local educational agency the reasons why the plan was rejected and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of rejection of its plan, a covered local educational agency shall revise the plan to conform with the State Governor's required changes.

(d) LOCAL EDUCATIONAL AGENCY IMPLEMENTATION OF MANAGEMENT PLANS; CERTIFICATION.—If a management plan submitted under this section is not disapproved by the State Governor within such 60-day period, a covered local educational agency shall implement the plan. Within 12 calendar months after submission of its plan, each covered local education agency—

(1) shall implement the plan, and

(2) shall certify to the State Governor that the plan has been implemented, by submitting a statement in writing detailing the implementation.

(e) PUBLIC AVAILABILITY OF MANAGEMENT PLAN.—A copy of the management plan required under subsection (b) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

(f) The Administrator, upon request by a Governor and after notice and comment and opportunity for a public hearing in the affected State, may waive some or all of the requirements of this section and section 204 with respect to such State if it has established and is implementing a program of asbestos inspection and management that contains requirements that are substantially equivalent to the requirements of this section and section 204.

SEC. 207. ENVIRONMENTAL PROTECTION AGENCY RESPONSE AUTHORITY.

(a) IN GENERAL.—Whenever—

(1) the presence of asbestos-containing material in a school building may present an imminent and substantial endangerment to human health, and

(2) the local educational agency is not taking sufficient action consistent with standards prescribed under this title (as determined by the Administrator or Governor) to abate or arrange for the abatement of the asbestos,

the Administrator or the Governor of a State is authorized to act, consistent with standards prescribed under this title, to abate or arrange for the abatement of the hazard, or to take any other response measure which the Administrator or the Governor deems necessary to protect human health.

(b) COST RECOVERY.—The Administrator may seek reimbursement from a local educational agency or any other potentially responsible party in a court of the United States for all costs of abatement action under this section incurred by the United States Government. Nothing in this section creates a cause of action or in any other way

increases or diminishes the liability of any person under any other law.

(c) VENUE.—In any case in which the Administrator seeks reimbursement from a local educational agency pursuant to subsection (b), such action shall be filed in the judicial district in which the abatement action occurred.

SEC. 208. ABATEMENT ACTION.

When the Administrator or the Governor of a State determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of asbestos in a school building, the Administrator may request the Attorney General of the United States, or the Governor may act, to secure such relief as may be necessary to abate such danger. The district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief, including injunctive relief, as the public interest and the equities of the case may require.

SEC. 209. PUBLIC PROTECTION.

(a) PUBLIC PROTECTION.—No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this title to any other person, including a State or to the Federal Government.

(b) LABOR DEPARTMENT REVIEW.—Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 11(c) of the Occupational Safety and Health Act.

SEC. 210. POLLUTION INSURANCE.

(a) DEFINITIONS.—As used in this section—

(1) INSURANCE.—The term "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State of Federal law.

(2) POLLUTION LIABILITY.—The term "pollution liability" means liability for injuries arising from the release of asbestos.

(3) RISK RETENTION GROUP.—The term "risk retention group" means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

(4) PURCHASING GROUP.—The term "purchasing group" means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

(b) STATE LAWS.—Nothing in this section shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this section, including recognition or qualification of risk retention groups of pruchasing groups.

(c) RISK RETENTION GROUPS.—

(1) EXEMPTION.—Except as provided in this subsection, a risk retention group shall be exempt from the following:

(A) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

(B) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

(C) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

(D) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

(2) EXCEPTIONS.—

(A) STATE LAWS GENERALLY APPLICABLE.—Nothing in paragraph (1) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

(B) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Paragraph (1) shall not apply to any State law which requires a risk retention group to do any of the following:

(i) Comply with the unfair claim settlement practices law of the State.

(ii) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

(iii) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

(iv) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

(v) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

(vi) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

(vii) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(I) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(II) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

(viii) Comply with lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under clause (vii).

(3) APPLICATION OF EXEMPTIONS.—The exemptions specified in paragraph (1) apply to—

(A) pollution liability insurance coverage provided by a risk retention group for—

(i) such group; or

(ii) any person who is a member of such group;

(B) the sale of pollution liability insurance coverage for a risk retention group; and

(C) the provision of insurance related services or management services for a risk retention group or any member of such a group.

(4) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) PURCHASING GROUPS.—

(1) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

(A) A State law, rule, or order which prohibits the establishment of a purchasing group.

(B) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(C) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group described in subparagraph (B) of this paragraph.

(D) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

(E) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

(F) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

(G) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

(H) A State law, rule, or order which otherwise discriminates against a purchasing group or any of its members.

(2) APPLICATION OF EXEMPTIONS.—The exemptions specified in paragraph (1) apply to the following:

(A) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

(i) a purchasing group; or

(ii) any person who is a member of a purchasing group.

(B) The sale of any one of the following to a purchasing group or a member of the group:

(i) Pollution liability insurance and comprehensive general liability coverage.

(ii) Insurance related services.

(iii) Management services.

(3) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(e) APPLICABILITY OF SECURITIES LAWS.—

(1) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

(A) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

(B) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

(2) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(3) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

SEC. 211. ENFORCEMENT CONSIDERATIONS.

In determining the amount of a civil penalty to be assessed under section 16 of this Act against a local education agency for failure to comply with a requirement of this title or a rule or regulation issued under this title, the Administrator shall consider—

(1) the significance of the violation;

(2) the culpability of the violator, including any history of previous violations under this Act;

(3) the ability of the violator to pay the penalty; and

(4) the ability of the violator to continue to provide educational services to the community.

SEC. 212. PREEMPTION.

(a) Nothing in this title shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to asbestos or asbestos-containing material, including the abatement thereof, in school buildings within such State.

(b) Nothing in this title or any standard, regulation or requirement promulgated pursuant to this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the abatement, including the removal, of asbestos-containing material, or a portion of such costs, at any time prior to the actual date on which such material is removed.

SEC. 213. DEFINITIONS.

For purposes of this title—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "local educational agency" means—

(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381);

(B) the owner of any non-profit elementary or secondary school and building; and

(C) the governing authority of any school operated, pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to impact aid for children of members of the Armed Forces.

(3) the term "covered local educational agency" means any local educational agency which has under its authority, after conducting certification under section 205—

(A) any school in which there was no inspection for asbestos-containing material or in which the local education agency is not able to certify, pursuant to section 205(a)(1), that all areas of each school building, including boiler rooms, were inspected for asbestos containing material;

(B) any school which conducted an inspection for asbestos-containing material, found asbestos-containing material, and did not abate the asbestos-containing material; or

(C) any school which conducted an inspection for asbestos-containing material, found asbestos-containing material, and abated the asbestos-containing material by a method other than removal.

(4) the term "non-profit elementary or secondary school" means any elementary or secondary school (as defined in section 198 of the Elementary and Secondary Education Act of 1965) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully insure, to the benefit of any private shareholder or individual;

(5) the term "school building" means—

(A) structures suitable for use as classrooms, including school facilities such as laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(C) other facilities used for the instruction of students or for the administration of educational or research programs; and

(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A), (B), and (C); and

(6) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

SEC. 214. SECRETARY OF DEFENSE TO ACT IN LIEU OF STATE GOVERNOR.

In the administration of this title, including sections 204, 205, 206, 207, and 208, any function, duty, or other responsibility imposed on a Governor of a State shall, in the case of a school operated pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress), for children of members of the Armed Forces, be construed as having been imposed on the Secretary of Defense.

SEC. 215. OVERSEAS SCHOOLS OF DEPARTMENT OF DEFENSE.

(a) REGULATIONS.—The Secretary of Defense, in cooperation with the Administrator, shall, to the extent feasible and consistent with the national security, take such action as may be necessary to provide for the identification, inspection, and management (including abatement) of asbestos in any building used by the Department of Defense as an overseas school for dependents of the Department of Defense. Such identification, inspection, and management (including abatement) shall, subject to the preceding sentence, be carried out in a manner comparable to that provided for a local educational agency and a school building under this title.

(b) The Secretary of Defense and the Administrator shall issue such regulations as may be necessary to carry out the provisions of this section.

ASBESTOS SCHOOL HAZARD ABATEMENT ACT

(Public Law 98-377)

TITLE V—ASBESTOS SCHOOL HAZARD ABATEMENT

SEC. 501. This title may be cited as the "Asbestos School Hazard Abatement Act of 1984".

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FINANCIAL ASSISTANCE

SEC. 505. (a) There is hereby established within the Environmental Protection Agency an Asbestos Hazards Abatement Assistance Program (hereinafter in this Act referred to as the "Assistance Program"), which shall be administered in accordance with this section.

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(g)(4) No financial assistance may be provided under this section to any school which uses any person described in section 203(a)(1) (to carry out any activities described in such section) of the Toxic Substance Control Act who has not been accredited under a plan based on the model plan developed under section 203(a) of that Act. This paragraph shall apply to any financial assistance provided under this section more than 240 days after the date of the enactment of the Asbestos Hazard Emergency Response Act of 1986.

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SEC. 512. (a)(1) There are hereby authorized to be appropriated for the asbestos abatement program not more than $50,000,000 for fiscal year ending on September 30, 1984, $50,000,000 for the fiscal year ending on September 30, 1985, and $100,000,000 for each of the five succeeding fiscal years.

(2) The sums appropriated under this title shall remain available until expended.

(b)(1) A State with qualified applicants shall receive no less than one-half of 1 per centum of the sums appropriated under this title or the total of the amounts requested by such applicants, whichever is less. Those amounts available in each fiscal year under this paragraph shall be obligated before the end of that fiscal year. For the purposes of this paragraph the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Bureau of Indian Affairs and, taken together, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Of those sums appropriated for the implementation of this title, up to 10 per centum shall be reserved during the fiscal year ending September 30, 1984, and up to 5 per centum for the fiscal year ending September 30, 1985, for the administration of this title and for programs including, but not limited to, the following:

(A) the establishment of a training center for contractors, engineers, school employees, parents and other personnel to provide instruction on asbestos assessment and abatement;

(B) the development and dissemination of abatement guidance documents to assist in evaluation of potential hazards, and the determination of proper abatement programs;

(C) the development of rules and regulations regarding inspection, reporting and record-keeping; and

(D) the development of a comprehensive testing and technical assistance program.

In addition, for such purposes there are authorized to be appropriated out of the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986 $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(c) Of the sums appropriated for the implementation of this title ten (10) percent of $10,000,000, whichever is less, shall be reserved during each of the fiscal years ending September 30, 1987 and 1988 for grants to States or local educational agencies to carry out the provisions of sections 205 and 206 of the Asbestos Hazard Emergency Response Act of 1986. Appropriated funds used to carry out this subsection shall be taken from funds that would otherwise be used to provide loans under this Act.

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